

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Civil Action No.: 3: 18 CVS 00173**

**MONTEREY BAY-
CHARLOTTE, LLC. and
ARTHUR RUTENBERG
HOMES, INC.**

Plaintiffs,

v.

**JOHN DOTY II, NICOLE
DOTY, CORNERSTONE
BUILDERS GROUP, INC. and
BUNGALOW 626 HOMES,
LLC,**

Defendants.

COMPLAINT

NOW COMES the Plaintiffs, MONTEREY BAY – CHARLOTTE, LLC and ARTHUR RUTENBERG HOMES, INC., by and through undersigned counsel, and complaining of Defendants JOHN DOTY II, NICOLE DOTY, CORNERSTONE BUILDERS GROUP, INC., and BUNGALOW 626 HOMES, LLC do hereby allege as follows:

SUMMARY

This is a complaint for infringement of a registered copyright in a floor plan and elevation for a residential home.

PARTIES AND JURISDICTION

1. Plaintiff Monterey Bay – Charlotte, LLC ("Monterey Bay") is a North Carolina limited liability company. Monterey Bay is engaged in the business of designing, constructing, marketing, and selling houses.

2. Plaintiff, Arthur Rutenberg Homes, Inc. ("AR Homes") is a Florida corporation with a principal place of business in Clearwater, Florida. Monterey Bay is a franchisee of AR Homes.

3. Defendant John Doty II and Defendant Nicole Doty are natural persons who reside at 16123 Chiltern Lane, Huntersville, North Carolina 28078.

4. Defendant Cornerstone Builders Group, Inc. is a North Carolina corporation with an office in Charlotte, North Carolina.

5. Defendant Bungalow 626 Homes LLC is a North Carolina limited liability corporation with an office in Huntersville, North Carolina.

6. This Court has original and exclusive federal question jurisdiction over the copyright claims asserted herein pursuant to 17 U.S.C. § 101 et seq. and 28 U.S.C. §§ 1331 and 1338(a).

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

8. The jurisdictional prerequisite imposed by 17 U.S.C. § 411(a) is satisfied by United States Copyright Registration Nos. VA 1-947-584, VA 1-947-

590, VA 1-947-595, VA 1-947-722, VA 1-915-117, and VA 1-915-118. Copies of the copyright registrations are attached hereto as Exhibits 1 through 5, respectively.

FACTS

9. AR Homes is one of the largest networks of independently owned and operated homebuilding companies in the United States, with franchised homebuilders throughout Florida, Georgia, North Carolina, Ohio, South Carolina, and Tennessee. AR Homes has engaged in the business of designing, developing, constructing, and selling residential homes since 1952.

10. Monterey Bay is an independently owned and operated AR Homes franchise that designs, develops, constructs, and sells residential homes based on AR Homes' architectural plans and designs.

11. In the regular course of its business, AR Homes creates original architectural plans for the homes it, or its franchisees, intend to construct and sell in various communities.

12. The architectural plans created by AR Homes are works of authorship original to AR Homes.

13. AR Homes assigns a unique name to each architectural plan that it creates.

14. AR Homes routinely registers its claim of copyright in technical drawings and architectural works embodied in the technical drawings with the United States Copyright Office.

15. One of the plans developed by AR Homes is entitled the "Caswell."

16. AR Homes registered its claim of copyright in the technical drawings associated with the Caswell plan with the United States Copyright Office with the following registrations (the "Technical Drawing Registrations")(attached hereto as Exhibit A):

<u>Reg. No.</u>	<u>Title of Work</u>	<u>Date of Registration</u>
VA 1-197-584	1279F – Caswell Floor Plan and Elevations (A, B, C, & D)	March 17, 2015
VA 1-957-722	1359F – Caswell Floor Plan and Elevation B	March 17, 2015

VA 1-915-117 1318F – Caswell Floor Plan June 26, 2014
& Elevation A

17. AR Homes registered its claim of copyright in the architectural work associated with the Caswell plan with the following registrations (the “Architectural Work Registrations”)(attached hereto as Exhibit B):

<u>Reg. No.</u>	<u>Title of Work</u>	<u>Date of Registration</u>
VA 1-197-590	1279F – Caswell Floor Plan and Elevations (A, B, C, & D) (not yet constructed)	March 18, 2015
VA 1-947-595	1359F – Caswell Floor Plan & Elevation B (not yet constructed)	March 18, 2015
VA 1-915-118	1318F – Caswell Floor Plan and Elevation A (not yet constructed)	June 26, 2014

18. Monterey Bay offers the Caswell plan for construction in North Carolina, and has the exclusive right to use the Caswell plans for construction of homes within the Woodlands at Davidson subdivision.

19. John Doty and Nicole Doty (the "Doty Defendants") contacted Plaintiff, Monterey Bay and expressed a desire to build a home in Woodlands at Davidson subdivision located in Davidson, North Carolina.

20. In June 2016, the Doty Defendants met with representatives of Monterey Bay in order to review floor plans exclusively available from Monterey Bay for construction of homes in the Woodlands at Davidson subdivision.

21. The Doty Defendants were shown at least two (2) different copyrighted floor plans, including the Caswell plans.

22. The Doty Defendants provided Monterey Bay with a deposit in order to hold lot 43 for them with the hopes of building their home on that lot. The representatives from Monterey Bay gave the Doty Defendants copies of the Caswell floor plans as part of a marketing package, as well as other written information both of which contained copies of the Caswell floor plans.

23. The Doty Defendants also inspected the model home which was built according to the copyrighted Caswell plans.

24. Upon information and belief, the Doty Defendants hired Defendant Bungalow 626 Homes, LLC (Defendant Bungalow) to construct their home at Woodlands at Davidson on a lot not owned by Monterey Bay.

25. Upon information and belief, Defendant Cornerstone Builders Group, Inc. (Defendant Cornerstone) was hired to create technical drawings for a home to be copied or derived from the AR Homes' Caswell plans.

26. Defendant Cornerstone was not authorized to copy, modify, or create any derivative work based on the Caswell plan.

27. Defendant Cornerstone copied or caused to be copied the Caswell plan belonging to AR Homes and/or created or caused to be created a derivative work therefrom.

28. Upon information and belief, the Doty Defendants hired Defendant Bungalow to build or cause to be built a personal residence in Woodlands at Davidson using the technical drawings created by Defendant Cornerstone based on the Caswell plan belonging to AR Homes with respect to which Monterey Bay has the exclusive right to build in the Woodlands at Davidson subdivision.

29. After receiving copies of the Caswell plans, the Doty Defendants and/or their representatives periodically walked through the Caswell model home located near the Doty Defendant's construction site and observed various construction means and methods utilized by Monterey Bay to accomplish construction in accordance with the copyrighted Caswell plan.

30. Defendant Bungalow was not authorized to copy, modify, or create any derivative work, or build any home based on the Caswell plan belonging to AR Homes.

31. Upon information and belief, the Doty Defendants and Defendant Bungalow did, willfully and without the consent of AR Homes or its franchisee Monterey Bay, build or cause to be built a personal residence in Woodlands at

Davidson using the drawings created by Defendant Cornerstone based on the Caswell plans belonging to AR Homes.

COUNT I
COPYRIGHT INFRINGEMENT
REPRODUCTION
(All Defendants)

32. Plaintiffs reallege paragraphs 1 through 31 of this Complaint as if fully set forth herein.

33. AR Homes is the owner of all right, title, and interest in and to the Technical Drawing Registrations as set forth above. Monterey Bay owns the exclusive right to use the Caswell plans for construction of homes within the Woodlands at Davidson subdivision and has been delegated on behalf of Plaintiffs the right to enforce the Technical Drawing Registrations set forth above.

34. Defendants had access to the Caswell floor plans and elevation.

35. Upon information and belief, Defendants have copied or caused to be copied Plaintiffs' copyrighted plans for the Caswell plan in drafting further plans and/or constructing a home.

36. Plaintiffs did not authorize Defendants to make copies of Plaintiffs' plans or to copy any portion of the plans as embodied in the model home.

37. Defendants' plans are a copy of or are substantially similar to the Caswell plans owned by AR Homes.

38. By making and using unauthorized copies of Plaintiffs' copyrighted plans, Defendants have infringed Plaintiffs' exclusive right to reproduce Plaintiffs' copyrighted plans.

39. Upon information and belief, Defendants' acts of infringement were done intentionally and in willful disregard of Plaintiffs' copyrights.

40. Plaintiffs have been damaged by the conduct of Defendants as described herein and will continue to be so damaged in the absence of relief granted by this Court

41. Plaintiffs are entitled to recover their actual damages together with all profits of the Defendants attributable to the infringement. In the alternative, and at their election, Plaintiffs are entitled to recover statutory damages together with its attorney's fees under 17 U.S.C. §§ 504 and 505.

COUNT II
COPYRIGHT INFRINGEMENT
CONSTRUCTION
(All Defendants)

42. Plaintiffs reallege paragraphs 1 through 41 of this Complaint as if fully set forth herein.

43. AR Homes is the owner of all right, title, and interest in and to the Architectural Work Registrations as set forth above. Monterey Bay owns the exclusive right to use the Caswell plans for construction of homes within the

Woodlands at Davidson subdivision and has been delegated on behalf of Plaintiffs the right to enforce the Architectural Work Registrations as set forth above.

44. Defendants had access to the Architectural Work Registrations through marketing materials supplied to them, the Plaintiffs' websites, and by visiting the Plaintiffs' model home.

45. The Defendants' plans and the home constructed by Defendants, when taken as a whole, are virtually identical, or at a minimum, substantially similar, to the protectable elements of the Architectural Work Registrations.

46. Plaintiffs did not authorize Defendants to copy the Architectural Work Registrations.

47. By constructing a home based on Plaintiffs' copyrighted plans, the Defendants have infringed Plaintiffs' exclusive right to reproduce the home embodied in Plaintiffs' copyrighted plan.

48. Plaintiffs have been damaged by the conduct of Defendants as described herein and will continue to be so damaged in the absence of relief granted by this Court.

49. Plaintiffs are entitled to recover their actual damages together with all profits of the Defendants attributable to the infringement. In the alternative, and at their election, Plaintiffs are entitled to recover statutory damages together with its attorney's fees under 17 U.S.C. §§ 504 and 505.

COUNT III
COPYRIGHT INFRINGEMENT
MARKETING AND SALE
(Defendant Bungalow 626 Homes, LLC)

50. Plaintiffs reallege paragraphs 1 through 49 of this Complaint as if fully set forth herein.

51. Defendant Bungalow, without the authorization or consent of Plaintiffs, constructed and sold a home based on Plaintiffs' copyrighted plans.

52. The unauthorized sale of the home based on Plaintiffs' copyrighted plan infringed Plaintiffs' exclusive distribution rights in Plaintiffs' copyrighted plans.

53. Plaintiffs have been damaged by the conduct of Defendants as described herein and will continue to be so damaged in the absence of relief granted by this Court.

54. Plaintiffs are entitled to recover their actual damages together with all profits of the Defendants attributable to the infringement. In the alternative, and at their election, Plaintiffs are entitled to recover statutory damages together with its attorney's fees under 17 U.S.C. §§ 504 and 505.

WHEREFORE, Plaintiffs pray for the following relief:

A. That the Defendants, their agents, servants, employees and attorneys and all those in active concert or participation with them, be permanently and forever enjoined from infringing any United States Copyright Registration owned by

Arthur Rutenberg Homes, Inc. including, but not limited to, the Technical Drawing Registrations and the Architectural Work Registrations and the Caswell Plans.

B. That the Court order the impounding and destruction of any and all copies of the accused work or any other infringing work of Defendants, including any and all plans, cutsheets, sketches, drafts, plates, patterns, molds, matrices, masters, tapes, film negatives, computer files or other articles or means by which copies of the same may be reproduced;

C. That Plaintiffs be awarded judgment for damages and profits pursuant to 17 U.S.C. §504 against each of the Defendants in an amount to be determined at trial;

D. That, in the alternative and at their election, Plaintiffs be awarded statutory damages pursuant to 17 U.S.C. §504 against each Defendant and that same damages are increased due to the willful conduct of Defendants;

E. That this Court award any and all relief not here enumerated that this Court should deem just and equitable;

F. That Plaintiffs be awarded the costs and attorneys' fees incurred in this action; and

G. That all triable issues be brought before a jury.

This the 6thth day of April 2018.

s/ Gilbert J. Andia, Jr.
Kenneth J. Gumbiner (NCSB 12825)
Gilbert J. Andia, Jr. (NCSB 16533)

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